

Sales of “canned” computer software are taxable retail sales in Illinois whether purchased off the shelf or downloaded over the Internet. See 86 Ill. Adm. Code 130.1935. (This is a GIL).

June 30, 2000

Dear Xxxxx:

This letter is in response to your letter received April 27, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department’s website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing this Letter to ask for a ruling on whether our software we sell is subject to Sales tax or not. After reviewing the Regulations under Section 130.1935, we feel that our sales meet all 5 requirements for being tax exempt.

- Our Clients are required to sign a Licensing Agreement when purchasing the Software.
- Licensing Agreements do restrict the duplication & use of the Software.
- Licenses are Non-Transferable.
- We provide replacement Software to Clients with live Serializations, free Copies if they are lost or damaged.
- The Customer must destroy the Software upon Termination of the License.

We are asking for a ruling for all our COMPANY Software sales in the State of Illinois, from all our present offices and all future offices we open or acquire.

I have enclosed several copies of our Licensing Agreements for your review. Please feel free to contact me if you have any questions regarding this request. My number is #####.

Sales of “canned” computer software are taxable retail sales in Illinois whether purchased off the shelf or downloaded over the Internet. See the enclosed copy of 86 Ill. Adm. Code 130.1935. However, if the computer software consists of custom computer programs, then the sales of such software may not be taxable retail sales. See Section 130.1935(c). In determining whether software is “canned” or is “custom,” please note that custom computer programs or software are prepared to the special order of the customer. The selection of pre-written or canned programs assembled by vendors into software packages does not constitute custom software unless real and substantial

changes are made to the programs or creation of program interfacing logic. See Section 130.1935(c)(3).

Licenses of computer software, whether canned or custom, that meet all of the criteria provided in Section 130.1935(a)(1), will not be subject to Retailers' Occupation Tax nor will the transfer of the subsequent software updates related to that software. A license of software is not a taxable retail sale if:

- A) It is evidenced by a written agreement signed by the licensor and the customer;
- B) It restricts the customer's duplication and use of the software;
- C) It prohibits the customer from licensing, sublicensing or transferring the software to a third party (except to a related party);
- D) The vendor will provide another copy at minimal or no charge if the customer loses or damages the software; and
- E) The customer must destroy or return all copies of the software to the vendor at the end of the license period.

As stated above, licenses of computer software are not taxable if they meet all of the criteria listed in Section 130.1935(a)(1). However, item (D) of that part requires the license to contain a provision requiring the vendor to provide another copy at minimal or no charge if the customer loses or damages the software. The Department has deemed software license agreements to have met this criteria if the agreements do not contain a provision about the loss or damage of the software, but the vendors' records reflect that they have a policy of providing copies of software at minimal or no cost if the customers lose or destroy the software.

Item (E) of this part also requires a license to require that a customer destroy or return all copies of the software to the vendor at the end of the license period. The Department has also deemed perpetual license agreements to qualify for this criterion even though no provision is included in the agreements that requires the return or the destruction of the software.

In the context of a General Information Letter, we are unable to issue a binding ruling regarding whether your licensing agreement meets the requirements of the regulation. Upon reviewing the agreements you attached, it appears that the forms you attached, Form 1 and Forms 3 through 9, may satisfy the requirements of the regulations.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.